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ABSTRACT

Despite deficiencies in depository administration and circulation, recent legislation concerning government publications in France has increased the availability of information. In France, in contrast to Great Britain and the United States, the publication of government documents is not centralized but is the province of individual agencies. Circulation of documents is a mixture of sale, free distribution, and deposit in libraries, and is often more beneficial to urban than provincial users. Deposit in libraries, however, is not consistent throughout the government and government publications are not maintained as a unit in libraries but are dispersed throughout the general collection. Bibliographic control of official publications is the responsibility of the Bibliotheque Nationale and official supplements of the national bibliography are published bimonthly. Legislation enacted in 1978 is bringing about substantial changes in increased accessibility for the French citizen by guaranteeing rights to information, while protecting individual privacy, and making such information available on demand. It places statutory limitations on confidentiality and provides for mandatory publication or announcement of government papers. While much remains to be done, the right of every member of the public to see official documents is enshrined in law. (RAA)

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Public Access to Government Information
The position in France in 1979

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Finally the right of access to information is regarded both as an instrument of power and as a means of carrying out effective remedies. It is essential to have access to documents put together by the government both for practical purposes and for everyday affairs, for decisions being made in social or economic matters, as well as for scientific research.

Access to government information may be achieved in various ways, by means of publication, by consulting records, by being present at working meetings of the government or by reading documents.

These various methods will be dealt with individually.

1. THE TRADITIONAL METHODS

1.1. The Publication of Government Documents

1.1.1. Origins of publication

This is the method most commonly employed, if not the oldest, for allowing the public access to official information.

It should be noted in passing that in France, at least before the Revolution, publication of royal decrees was not carried out on the initiative of the monarchy. The kings, having issued their decrees, were more or less indifferent as to the method by which they were made known to their subjects. The numerous collections of decrees and ordinances of the kings of France have all been assembled privately while individual decrees have been published by private printing-houses.

These publications were essentially for legal purposes. It was a question of bringing together the basic precepts of the law.

The object of the first regular publications was to acquaint citizens with their obligations, and if publication of the French salt-tax* agreement, on the collection of indirect taxes, goes back to the seventeenth century, we must wait till the following century - the last years before the Revolution - for the appearance, at Basle or Lausanne, as a precautionary measure, of private collections of documents on the management of finances.

According to the introduction to one of these collections: "as soon as public approbation is willingly dispensed with in order to defend oneself from any criticism, more blame than praise is surely merited". (1)

These widely held views were put into practice by the Assembly convoked in 1789, when it was decided to make public the records of the sittings. These were on sale by subscription and were available within two days.

The official gazette or Moniteur universel, in which the foreword makes special mention of the English custom of publishing the journals of the two houses of Parliament, made its appearance during the same period.

> "We believe that in the present circumstances we are performing a service to the public by being the first to offer and publish a Gazette and news sheets in the English manner, which will appear every day ...
> We believe that these papers will be read generally, the French Nation believing in the necessity for keeping informed on all administrative and government issues".

As from 1793 the Bulletin des lois [Law reports] published the resolutions of the legislative assembly and the decisions of the government.

After the Revolution there was an increase in the number of reports of the assembly committees as well as of reports of the administration, of which the main series go back to the middle of the nineteenth century.

1.1.2. Publication

At the present time, if one looks at the method by which the great nations ensure dissemination of government information by means of printed publications, considerable differences are apparent, which were pointed out last year at Strbské Pleso by Mr. Cherns. (2)

In France, in contrast to Great Britain and the United States, publication of official documents is not centralised. Many publishers of official documents coexist, each with its own individual character, and many ministries either make use of private printers and publishers or publish themselves by means of their own.

The monopoly, which never really existed, of the Imprimerie nationale [State press] is only a survival, and deviations from it are virtually the rule. The Imprimerie nationale now only exercises its monopoly in the case of the Ministries of the Economy and the Budget (formerly combined as the Ministry of Finance) and, to a lesser degree, in the case of the Ministries of Agriculture, Defence and Industry. In other respects, the Imprimerie nationale may simply print for its clients, and in this case it returns the stock of publications for circulation after invoicing for its services, or else it behaves like an ordinary publisher and is itself responsible for the sale of publications at a price that takes into account the cost price.

The policy pursued by the Direction des Journaux officiels [the Office of the Official Journal] is quite different. Not only is it responsible for daily publication of the Journal officiel de la République Française [Official Gazette of the French Republic] in various editions (laws and decrees, parliamentary debates, official documents) ... but also for the parliamentary documents of the National Assembly and the Senate, various pamphlets printed separately, and codes of law, which are all reissues in octavo of publications that have appeared in the official gazette as well as a certain number of official ministerial reports.

All these publications must be accessible to every citizen at a moderate price. The result is that the prices charged by the Direction des Journaux officiels bear no relation to cost price, and the publications are sold at a loss. In this respect official journals fulfil a public service. They are very colourless utilitarian productions, but this is compensated for by the fact that they are easy to handle and are obtainable at a very low price.

The publications of the Documentation Française [French Documents Service] are, however, attractively produced and varied. The leading government reports, recent publications on home and foreign affairs and resumés of the main current social and political events are thus placed at the disposal of the large educated and university population.

Like the Imprimerie nationale and in contrast to the Direction des journaux officiels, the Documentation Française tries to balance its budget and, although its publications are sold at bargain prices, the cost price is also taken into account.

Even though the French government publishes extensively, information for the citizen is far from being assured in every case in a satisfactory manner. A great weakness of the system is the fact that the literature is circulated as much by sale and free distribution as by placing it at the disposal of the public in libraries and information centres.

1.1.3. Circulation

For the Imprimerie nationale, the Direction des Journaux officiels and the Documentation Française circulation is effected by post. Unless one is resident in Paris and within reach of the sales centres of these three publishing houses, there is no alternative source of supply. In addition these three houses issue very good sales catalogues, which enable prospective customers to identify material that might be of use to them.

It is extremely rare for official publications to find their way into the commercial publishing sector. They receive no publicity, apart from internal administrative publicity.

The official journal, however, provides publicity for the publications of the Direction des Journaux officiels, announces once a week the latest publications of the Documentation Française and reports parliamentary documents that have been put in circulation. But it is extremely rare for administrative departments to advertise their publications in the "advertisement" section of the Bibliographie de la France [Bibliography of France], occasional exceptions being the Documentation Française and the Institut national de la statistique des études économiques [the National Institute of Statistics and Economics].

The INSEE, by reason of its regional economic investigation centres, has a distribution network for its publications throughout France. The Ministry of Education is able also to circulate its literature widely by means of the Centre national de documentation pédagogique [National Centre of Information on Teaching], which has regional, departmental and local centres. These are the only two examples of official distribution networks.

As for the ministries which publish themselves, they usually distribute their publications free of charge according to a mailing list drawn up a priori. As a general rule, little attempt is made to ascertain whether or not publications attain their end and answer the requirements of their expected readers.

These shortcomings have been recognised. By 1971 the Prime Minister was setting up a Commission pour la Co-ordination de la Documentation Administrative [Commission for the co-ordination of Government Documentation] to study all the problems relating to the publication and circulation of documents issued by the central government departments, and to bring about a more efficient utilisation of government documents. At the same time as directing the circulation of gratuitous publications, the commission set up distribution centres for sales catalogues, called 'points bleus'[blue points] after the posters advertising their presence to the public. These consultation centres have been established in information bureaux of archives, town halls, prefectures and services open to the public in the hope of enabling the public to become better aquainted with official publications.

When the publications of the government are well presented and accessible success is certain. The book-shop of the Documentation Française, where

not only their own publications, but also a choice of other official publications is available, is proving very successful and is always full of customers. The Documentation Française has just opened another book-shop of the same kind in Lyon, so that provincial people may have better access to its publications.

An attempt at publicity was made for the Guide de vos droits et de vos démarches [Guide to your Rights and Procedures] published in 1978 by the Service d'information et de diffusion [Information and Publicity Service] under the direction of the Prime Minister. It was put on sale in bookshops and in station and underground book-stalls. This guide-book proved to be a great success and has just been republished.

For some time the government, moved by a new spirit, has been trying all means to reach the public in all areas wherever they may be. They conceived the idea of making use of the post offices, found even in the smallest villages, to serve as distribution centres for government information and users' hand-books; publications as widely circulated as telephone directories have been used as back-ups for official information of all kinds.

On the initiative of the CCDA a Répertoire des Centres de documentation de l'administration [List of official information centres] was published in 1978. An index of users' hand-books is in course of preparation.

1.2. Collections of Official Publications in Libraries

The sale and distribution of official publications is not the only method employed in making official information accessible to the citizen. In some countries, such as the United States, there is a network of depository libraries, which receive a large proportion of the federal publications from the Superintendent of documents and are responsible for placing them at the disposal of their readers. Other countries have legal deposit in multiple copies which enables them to supply a large number of official collections in public libraries.

In France much remains to be done in this field. Although the French law on legal deposit derives from the Ordinance of Montpellier of 1537 and official publications have always been subject to it, the law has not always been respected; far from it. The collections of decrees of the Old Regime which can to-day be found in the Bibliothèque nationale were assembled by private collectors who made a gift of them to the Bibliothèque du roi [Royal library]. In many laws there has been an attempt to reaffirm the obligation of legal deposit of central government publications in the Bibliothèque nationale, but without much success.

Article 35 of the financial law of 29 July 1881 stipulates that :

> "as from the 1st January 1882, the Ministries and Public Offices, both in Paris and the departments, shall be obliged to send a copy of all documents published by them, as well as publications to which they subscribe :
>
> 1. to the Bibliothèque nationale
> 2. to the Bibliothèque du Sénat [the Senate library]
> 3. to the Bibliothèque de la Chambre des députés [the Library of Chamber of Deputies]

This measure, intended for official publications, was in addition to the press law of the same year, which provided for the legal deposit of periodical publications. It was designed to supply three large public collections, where citizens could come and consult official publications. This law has never been repealed and deposit continues to be made to the National Assembly and the Senate.

As far as the Bibliothèque nationale is concerned this legal deposit provision and that made by the law of 21 June 1943 - which is still in force - overlap. This law provides that :

> "printed matter of all descriptions ... musical, photographic, cinematographic or record put on sale, or on hire, or distributed to the public, or granted reproduction rights, is subject to legal deposit".

Article 8 of the law, which lists the individuals and legal entities subject to legal deposit, mentions public offices in the same section as printers, publishers, societies and syndicates.

A letter from the head of the government to the ministers and Secretary of State, dated 4 November 1943, even gives an extensive interpretation of this text :

> "Public offices are obliged ... to deposit all works edited or published by them. In general all publications, whether intended for sale to the public or for circulation solely to public or semi-public departments, should be subject to legal deposit, with the exception, of course, of circulars and departmental instructions".

These provisions are not always respected, principally for two reasons :

- the first is the result of administrative ignorance; officials who, at one time or another during their career, find themselves responsible for publishing, have not been trained for this task. Frequently they have never even heard of legal deposit and are ignorant of the fact that they are subject to it. For this reason, publications which are not published by one of the official publishing houses - Imprimerie nationale, Journaux officiels, Documentation Française - have not always deposited.

- also it is not always easy to determine what is in actual fact liable for deposit. The fact of publicity would appear to make it an obligation, but what about the large number of documents intended for internal circulation, but frequently widely distributed to the press and to members of parliament, especially as it is laid down that the method of reproduction, printing, multigraph or offset, cannot serve as a criterion ? It is obvious that when in doubt the authorities tend to settle the matter with a negative and dispense with legal deposit.

A rule-of-thumb method has been found for resolving cases of this kind. When the departments agree to deposit documents, which they do not wish to be divulged immediately at the Bibliothèque nationale, these documents are put "in reserve" and are not catalogued, which withdraws them from the knowledge of readers. The documents will not be processed or issued until after a lapse of time determined by agreement with the authorities.

It is paradoxical to invoke this procedure in a report on public access to government information, but it is nevertheless a method of preserving documents and, by postponing it, making communication to the public possible.

As we have seen above, the Bibliothèque nationale through legal deposit and the libraries of the National Assembly and the Senate through the provision for deposit designed for official publications, are regularly supplied with official collections of documents. But it should be borne in mind that the libraries of the Assembly and the Senate are far from being public and are as a rule reserved for members of parliament. In the case of other libraries there is a vast difference between what is offered to the Parisian reader and that offered to those in the provinces.

In Paris all the large research libraries, such as the Bibliothèque Cujas de droit et de sciences économiques (the Cujas library of Law and Economics), the Bibliothèque de la Fondation nationale des sciences politiques [the Library of the National Foundation for Political Science], the Bibliothèque administrative de la ville de Paris [the Administrative Library of the Town of Paris] have excellent collections of official publications. In the provinces the large municipal and university libraries acquire the principal collections of the INSEE and the Documentation Française, but they buy them at considerable cost and, owing to their modest resources, they only have a selection of the most important publications. The municipal libraries receive, by printer's legal deposit, everything that has been printed in their area, and thus receive, or should receive, all departmental and local government publications.

As a general rule, and contrary to practice in the United States, official publications are not in France arranged in separate collections in libraries, but are integrated into the general collections. It is therefore particularly difficult, without making a special study, to determine their importance and the use made of them in public libraries. It would appear, however, that, in general, they are under-utilised both by the general public and researchers, and this is an indication of the tremendous task of educating and informing the public that remains to be done.

1.3. Bibliographic Control

Bibliographic control of official publications is assured by the national bibliography. But it is a particularly troublesome field, as has been shown by Madame Sinassamy in her inquiry on behalf of the International Congress on National Bibliographies (3).

In France it is the Bibliothèque nationale which has legal deposit and which publishes six times a year, Supplement II, Publications officielles (Official Publications) to the Bibliographie de la France [Bibliography of France]. This bibliography lists all the official monographs received by legal deposit, and sends on scientific monographs for the Books section and the first issues of a series for the Supplement I Publications en série [Serial Publications].

This bibliography may be criticised for delays in publication, which normally takes place six months after the date of deposit, which is often itself late and secured only after claim.

The bibliography can also be charged with not being comprehensive because by no means all publications are deposited. But it has no rivals, since the publications listed by it do not figure in the commercial section of the Bibliographie de la France.

In actual fact, although it enjoys a privileged position as a result of legal deposit, the Bibliothèque nationale has great difficulty in listing what is produced by the administrative departments. It cannot, as is the case with commercial publications, use legal deposit by printers to check that of publishers. For official publications there is often only one

deposit. It is necessary to scrutinise the publications themselves, examine the introductions in detail, check the lists given at the end of the volume of publications issued, examine the sales catalogues and the advertisements that have appeared in the press and the lists of acquisitions from information centres. Collaboration between government libraries is very productive. It is as the result of collaboration between Parisian libraries that the Bibliographie sélective des publications officielles françaises [Selective Bibliography of Official French Publications] appeared. This bibliography, which comes out once a fortnight, is edited jointly by the Bibliotheque nationale, the Bibliotheque de la Documentation Française, the INSEE, the Fondation nationale des sciences politiques and the Bibliotheque administrative de la Ville de Paris. Each library has its own system of communications and acquisitions. The Bibliotheque nationale can therefore check that everything that has been listed has been deposited.

In 1973 the Commission de coordination de la documentation administrative published Le Repertoire des publications périodiques et de série de l'administration française [The Index of Periodical and Serial Publications of the French Government]. This index is the fruit of an inquiry carried out by means of questionnaires submitted to government departments. A new considerably enlarged edition is to be brought out shortly.

Apart from these bibliographies mention should also be made of the Bibliographie internationale de science administrative [International Bibliography of Administrative Science].

This quarterly bibliography, published by the CNRS (Centre Nationale de la Recherche Scientifique) [National Centre for Scientific Research] has different objectives from the two others, since it records all publications concerned with public administration. Further it adds to them by scanning the official journal as well as numerous administrative reviews, and announces a number of sometimes little known monographs.

Together with the normal bibliographies the sales catalogues of the administrative departments are extremely useful. In particular the Documentation Française, the Direction des Journaux officiels and the INSEE should, among many others, receive special mention.

Lastly a project is being studied to list, record and circulate on microfich investigations carried out under government contract as well as research in progress. This project was elaborated in 1978 under the name RECOURS by the Centre de documentation sciences humaines [Centre for Documentation in Social Sciences] of the CNRS, with the collaboration of the CCDA (4). Studies for financing and feasibility are in progress.

1.4. Access to archives

One cannot exclude from this report the facility of public access to the archives of public offices, although this form of communication, deferred in time, caters more for the needs of historical research than for those of the scrutiny and control of government activity.

When, during the French Revolution, the government records of the Old Régime were assembled in a central store, it was stipulated that the public should have free access to them. The decree of 7 Messidor II (25 June 1794) stipulates that "every citizen may, at fixed times and in all the stores, request access to the documents kept there : access will be free of charge, without delay, and with appropriate security precautions".

In point of fact the main object of this right of free consultation was to enable the purchasers of national property to find the title deeds of the property that they had acquired.

For more recent public records, by the decree of 14 May 1887 the fifty-year rule was introduced, and this was reaffirmed in 1898. These terms were made more flexible in 1962 by a decree which authorised, with certain exceptions, free access to documents dating back to before 1920. In 1970 the term was reduced to thirty years, and communication of documents dating back to before 10 July 1940 was authorised; access could be obtained to more recent documents by special authorisation of the Minister who had deposited the document and the Minister for Cultural Affairs. It was also laid down that documents that were by their nature destined to be brought to the knowledge of the public should be freely communicated, and the fact that they had been deposited with the archives did not prevent this. A number of regulations were produced in order that the provisions of the decree might be applied to each individual ministry, but these regulation were widely dissimilar, the principles and conditions of access varying from one to another. More especially as the Foreign Office, the War Office, the Air Ministry and the Council of State were debarred from depositing documents with the Archives nationales [National archives] and had their own rules.

All this was put in order by the recent law of 3 January 1979 on public records.

In article 6 this law provided that in general "documents to which there was free access before they were deposited with the public records shall continue to be accessible without restriction of any kind to all persons on request". The documents that were accessible by virtue of the law of 17 July 1978, allowing public access to official documents, remain so; for others the rule is a term of thirty years, with the exception of :

- documents consisting of personal medical information for which the term is 150 years
- files relating to staff, for which the term is 120 years
- legal documents, notaries' minutes and the registers of the register office, for which the term is 100 years
- original documents for censuses and statistics consisting of personal information concerning private life, for which the term is 100 years
- documents containing information concerned with private life, the security of the State or national defence, the list of which will be fixed by decree of the Council of State, for which the term is 60 years.

Communication of documents at no charge had been provided for initially, but was not retained, not in order to limit the right of access, but in order to take into account modern research methods, whereby the use of a computer might be required, and payment should be the responsibility of the researcher, or at least of the institution to which he is attached.

1.5. Publicity for the Assemblies

If attendance of citizens at sessions of the assemblies does not replace the right of access to government documents, it is none the less a privileged means of acquiring knowledge concerning government actions. In France it was the Revolution which instituted the right. The National Assembly of

1789 decided that its sittings should be public as well as the records of debates. The latter were available by subscription two days after the sitting, the delay being explained by the period of time that had to be allowed for printing and proof-reading.

Again today article 33 of the constitution stipulates that the sittings of the two assemblies shall be public and that the full text of the debates shall be published in the Official Journal.

In the same way the law on County Councils and the local government code stipulate that the sittings of the County Councils and the Municipal Councils shall be public, the reports of the debates of the County Councils being accessible to the press within 48 hours of the sitting, and those of the Municipal Councils must be on display within a week.

In the case of the departments the budgets and accounts must be published, and in the case of the communes the minutes of the Municipal Council, the budgets and accounts of the commune and the municipal decrees must be at the disposal of every resident or taxpayer, who has the right to make a copy of them; everyone may publish them on his own responsibility.

2. NEW METHODS

2.1. Information services and enquiry centres

As they developed, the traditional methods for getting information to the public - such as the publication of official documents, and their use in libraries and archives - were seen to be inadequate. Faced with the growing volume of published information, its complexity, the fact of its being scattered, difficulties of access, and gaps in the information, the average citizen is less and less well provided. He needs information which is precise, up-to-date, and immediately available when he needs it.

Very many attempts have been made by different governments. Here also the CCDA has played a very important part, by announcing important new developments, encouraging them, emphasising the gaps that still persist in its reports to the Prime Minister, and producing lists of information tools and documentation centres.

A number of ministries have set up public information services. There are even more documentation centres or units serving the administration. The CCDA since 1973 has undertaken the listing of them : almost 1500 documentation units have been identified and included in a guide which came out in 1978. Many of them were open to the administration only, but nevertheless it is very useful to know that they exist, so that their resources can be used, if necessary through the intermediary of more important bodies.

Another means of putting official information at the disposal of the public is the publication of user guides, manuals which in practical and easily accessible form give the information about administrative procedure and necessary formalities that is needed for present-day life. Committees of users of their services set up by different ministries have demanded better information for the general public in this respect. A working party has been formed to list existing guides and establish guidelines to producing such manuals. The Guide de vos droits et démarches, already mentioned, was the result.

Not content with merely bringing out information leaflets, the government has started a range of telephone enquiry points.

The best known is CIRA (Centre Interministériel de Renseignements Administratifs - Interdepartmental Centre for Government Information) which comes under the Prime Minister. Located in Paris, the Centre receives an average of 1200-1500 calls daily. It has regional branches in Lyons and Metz, and there are plans for another in Bordeaux. One could also mention the Centre d'Information .. Documentation .. Jeunesse [Centre for Information and Documentation for Young People], the Centre d'Information Féminin [Centre for Women's Information] , and many others, but one worthy of special note is the information service of the radio channel France - Inter, which covers all subjects - the weather, road traffic, youth employment and so on (5).

2.2. Access to government data banks

In many cases information collected by government is not to be found in publications, even those that are regularly updated, but is held in machine - based files which offer immediate and flexible access.

In 1975 the Parlement became concerned with obtaining access to the information held in these data-banks. The CCDA was asked by the Prime Minister to examine the methods of transmitting this information to members of the Parlement. Actually a number of these data-banks, files on staff or salary payments for example, are of no interest outside the departments that manage them, and they would in any case be confidential; but both Chambers of the Parlement have access by computer terminal to others, such as the data-bases of political facts or bibliographic information of the Documentation Française, the legal data-base of CEDIJ (the Centre d'Information Juridique - Centre for Legal Information), or the SIC data-base (Système Informatique pour la Conjoncture - Information System on Competition) of the INSEE.

Some government data-bases are available to the general public. This is the case with those of the Documentation Française (those of its own publications, its calendar of political events both internal and overseas, notices of the Council of Ministers, and Presidential Speeches), and also for RESEDA, the network of documentation on agricultural economics, the Ministry of Agriculture's data-base, and those of INSEE which can be consulted through the regional economic investigation centres (the Observatoires Economiques Régionaux). Others are available only to a narrower user group.

The putting of these systems onto a central computer at Valbonne can only improve access.

2.3. Access to government files

2.3.1. Abroad.

The most advanced level of provision of government information is access for the citizen to documents produced or held by the government. To the Scandinavian countries belongs the honour of having been the first to recognise this right. It figures as early as 1766 in the constitution of Sweden. The 1949 law on freedom of the press devotes a whole chapter to the publication of government documents. Finland followed Sweden's example in 1951, and Norway and Denmark in 1970, later and with more restrictions.

The USA, in several successive laws, the Freedom of Information Acts (PL.90 20, 1967; PL.93-502, 1974) and the Government in the Sunshine Act of 1976, set up the system for access to official files and open government.

Other countries have less liberal legislative provision: in Federal Germany, for example, the Länder are only obliged to give information to the press.

In Sweden, communication of documents is the rule, and the exceptions are restrictions where national security, confidentiality of personal information, and the protection of the country's reasonable economic interests are concerned. Documents both produced for and created within the administration must be communicated, but the latter only after decision on the particular question. Refusal of communication is at the discretion of the Ministers responsible, and legal actions are handled by the Supreme Administrative Court. There is no charge for access to documents, but there is a tax on copying.

In the USA, the object behind the laws mentioned above was to allow the public to understand the structure and functioning of government better, to know what documents bear upon matters in progress, to see these documents, and to be present at meetings of Congress and some commissions and federal organs, which was a completely new model of participation in the work of the executive. There is a charge for consulting documents which must cover the costs of the research involved. The decision to allow access should be made quickly; however, such has been the volume of requests and appeals that delays have lengthened and the work of the administration has been very considerably increased.

2.3.2. The French law of 17 July 1978

This law, which is just one year old, is bringing about a substantial change in the attitudes of mind of the French administration. In Part 1 (on freedom of access to government documents) article 1, it states :

> "Le droit des administrés à l'information est precisé et garanti par le présent titre en ce qui concerne la liberté d'acces aux documents administratifs de caractere non nominatif." [This section defines and guarantees the right of the governed to information where access to government documents other than those giving information about named individuals is concerned].

And in article 2 :

> "Les documents administratifs sont de plein droit communicables aux personnes qui en font le demande". [Government documents may in law be communicated to persons who request them.]

Up till now, administrative tradition has been one of secrecy. The administration, as was confirmed in a decree of the Council of State in 1954, was not obliged to give the grounds for its decisions. Moreover, some laws enjoined secrecy : article 378 of the penal code laid down penalties for anyone who devulged a secret to which he was party, and article 72 for anyone who infringed secrecy in matters concerning defence. The Civil Service law, article 10 of the 1959 decree, repeating article 13 of the law of 1946, states :

"Indépendamment des règles instituées dans le Code pénal en matière de secret professionnel, toutfonctionnaire est lié par l'obligation de discrétion professionnelle pour tout ce qui concerne les faits et informations dont il a connaissance dans l'exercice ou à l'occasion de l'exercice de ses fonctions.

Tout détournement, toute communication contraire aux réglements de pièces ou documents de service à des tiers sont formellement interdits.

En dehors des cas expressément prévus par la réglementation en vigueur le fonctionnaire ne peut être délié de cette obligation de discrétion ou relevé de l'interdiction édictée par l'alinéa précédent qu'avec l'autorisation du ministre dont il relève".

[In addition to the rules of professional secrecy established by the Penal Code, all civil servants are bound by the obligation of professional discretion in all matters that concern such facts or information as are known to them in the exercise or at the time of exercising their duties.

Any disclosure or communication to third persons contrary to the regulations concerning official property or documents is absolutely forbidden.

Over and above the provisions made by the regulations in force, no civil servant can be relieved of this obligation to discretion or of the prohibition stated in the above paragraph, except with the authorisation of the minister to whom he is responsible].

These provisions were thought of as protecting the independence and freedom of judgement of the administration against possible pressure from the public. In fact for many years they were subject to more and more criticism, and the examples of Sweden and the USA were frequently invoked to get the rights given by the 1789 declaration of the rights of man and of the citizen recognised in law.

The CCDA, created in 1971 by the Prime Minister, had been given the responsibility among other things to examine "the means to ensure the preservation and use of papers which, although not restricted, can not be distributed". To this end, it had set up a specialist committee, which studied the parts of the Commission's 1973 report relating to secrecy, and reported in 1974 that legislation to specify the right to communication of official information should be initiated, and set out a range of provisions that would allow this right to be exercised.

At the same time as the government was working on the question, a number of bills proposed by political groups of all kinds were put up to the offices of the Assembly in 1975, 1976 and 1977.

By the decree of February 11 1977, a commission was appointed to facilitate the communication of official documents to the public. It was asked to recommend "what types of documents ... are available upon request", and to advise when an individual encountered difficulties in obtaining a document. The Commission, which was known by the name of its chairman, M. Ordonneau, Conseiller of State, stated in its report that it considered it impossible to list all documents that were available. Rather it tackled the listing of those that were not available. It did in the course of its work establish what kinds of sensitivity on the part of the administration had

conflicted with the principle of communication.

At the end of 1977, the Assemblée Nationale was presented with a government bill which set out 15 provisions for improving relations between the administration and the public. Its legal drafting commission took up again the various earlier proposals, and added to the bill a first clause on access to government documents for the citizen. The government was not in a position to oppose this clause, which merely took up the proposals made by the CCDA. After the bill had been referred back several times, and its text improved, it was passed on July 1 and the law published on July 18 1978.

The law states extensive rights to information.

- the governed have the right of access to such government documents as do not concern named individuals.

- The original text of the bill in the Assemblée Nationale gave this right to French citizens. The Senate extended it to "persons of foreign nationality, of whom there are more than three millions in France, and who are possibly more frequently the subjects of administrative decision (on residency permits, work permits and so on) than French citizens, and must have access to information to know their rights and duties", and to legal entities, associations and societies.

  In addition, "every person has the right to know what information about decisions concerning him is contained in government documents (article 3). On his request, his own comments on these decisions must be attached as an annex to the relevant document".

These provisions mean a genuine right of reply on the part of the individual.

- What documents may be communicated ?

  "All files, reports, studies, minutes, statements, statistics, directives, instructions, circulars, memoranda and ministerial opinions which embody an interpretation of the law or a description of administrative procedure, advice except for that of the Council of State or administrative tribunals, and recommendations or decisions whether written, or on sound or visual recordings, or in mechanised form provided they do not concern named individuals "(article 1) ..." whether produced by the central administration of the State, or the authorities of public bodies, or from any organ responsible for a public service, even those under private law" (article 2).

The law then specifies what kinds of document can not be communicated. Apart from those giving personal information, they are such as could endanger :

- the confidentiality of the discussions of government and of bodies answerable to the executive

- the national defence or foreign policy

- finance, the public funds, the security of the state and public safety

- the course of legal proceedings or their preliminaries, except by authority of the responsible body

personal privacy, and personal or medical files

- commercial or industrial confidentiality

- the investigation of tax or customs offences

- or in a general sense confidentiality where protected by law (article 6).

Lists of those documents that can not be communicated will be established by ministerial decree.

A Commission on the availability of official documents will monitor the application of the law and advise in difficult cases (article 5). There is an appeals procedure against refusal of communication by the administration (article 7). Since it is only possible to ask for documents whose existence is known, the law provides for some documents to be published and others announced (article 9). Those which must be published regularly are :

"Directives, instructions, circulars, memoranda and opinions which embody an interpretation of law or a description of administrative procedure".

Other administrative papers must simply be listed regularly.

Although the law is now in force, it remains to be seen to what problems it will give rise. There are problems of interpretation and problems of a practical nature. Decrees on the application of the law will have to be worked out, and case law will have to be developed by the Commission on the availability of official documents to ensure uniform and consistent practice in all departments.

During a day seminar on May 4 last, at which a number of senior civil servants and representatives of users' organisations were present, the Association for the improvement of relations between government and the public raised a number of questions :

- What should be communicated ?

  Above all, can documents be made available before the decisions with which they are concerned have been taken ?

  Inspite of the desire of users to intervene before decisions are taken, it seems not.

- To whom should it be communicated ?

  Government bodies are in danger of being swamped with requests. There are various groups of users: individuals, users of government services, researchers, corporate bodies. It would seem preferable to give priority to the users of government services over researchers, and to corporate bodies over private individuals.

- How should it be communicated ?

  In the great majority of cases, government bodies do not have the staff or the means in the sense of space and equipment to make communication easy. In each body, the persons responsible for authorising communication will have to be specified, and methods assured of preventing the communication of documents from interfering with the smooth running of the department. In particular

a place for documents to be consulted will have to be provided.

At the same time a bill is being drafted to provide for the means for documents to be announced, under article 9 of the law. Each ministry or department will have to have a monthly bulletin where documents can be announced. Local authorities could either include them in mayoral decrees or publish them in their official bulletins.

As can be seen, much remains to be done, but infuture the right of every member of the public to see official documents is enshrined in law.

3. Conclusions

Not only in law but also in actual fact, there has been real progress in recent years in the availability of government information to the public. Progress is evident both in the enjoyment of human rights and in the sources of information. In fact, once the citizen's right to information has been recognised, it tends to be reflected in new laws and in the public that is asking for it.

In the same way, that right is no longer only realised through official publishing, but through direct access to the documents used in decision-making, and even in some cases through the right to be present at meetings.

However, though there may be general agreement about the benefits of public information, it remains true that there are legal and practical problems in the way of availability of official information.

In the legal sense, the right of personal privacy is universally acknowledged as having absolute priority over the right to information.

In the practical sense, the citizen's right of access to documents involves a considerable extra burden on the administration. Its day-to-day work should not be impeded or slowed down by work done in getting information to the public.

In addition, given the advanced technology which government uses, access without charge has ceased to be the general rule. It is generally agreed that the person asking for information must help to meet the costs of research on his enquiry, and these costs can be heavy when hours of computer time are involved. To some extent this will be a disincentive. Should we be regretting these qualifications, or be glad of them ? It would be a pity if money determined who had access to government information.

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